



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TE/GE EO EXAMINATIONS
1100 COMMERCE ST. MAIL CODE 4920 DAL
DALLAS, TEXAS 75242

501.03-00

Number: 201142028
Release Date: 10/21/2011

LEGEND

ORG - Organization name XX - Date

Date: July 28, 2011

Address - address

ORG
ADDRESS

Employer Identification Number:

Person to Contact/ID Number:

Contact Numbers:

Voice:

Fax:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear :

In a determination letter dated January 20XX, you were held to be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code (the Code).

Based on recent information received, we have determined you have not operated in accordance with the provisions of section 501(c)(3) of the Code. Accordingly, your exemption from Federal income tax is revoked effective January 1, 20XX. This is a final adverse determination letter with regard to your status under section 501(c)(3) of the Code.

We previously provided you a report of examination explaining why we believe revocation of your exempt status is necessary. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. On May 5, 20XX, you signed Form 6018, *Consent to Proposed Action – Section 7428*, agreeing to the revocation of your exempt status under section 501(c)(3) of the Code, effective January 1, 20XX.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You have filed taxable returns on Forms 1120 U.S. Corporation Income Tax Return, for the years ended December 31, 20XX, December 31, 20XX and December 31, 20XX with us. For future periods, you are required to file Form 1120 with the appropriate service center indicated in the instructions for the return.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit of declaratory judgment in the United States Tax Court, the United States Claims Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. You may write to the Tax Court at the following address:

You also have the right to contact the Office of the Taxpayer Advocate. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. Or, if you prefer, you may contact your local Taxpayer Advocate at:

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations or extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate, can, however, see that a tax matter, that may not have been resolved through normal channels, gets prompt and proper handling.

We will notify the appropriate state officials of this action, as required by IRC §6104(c).

If you have any questions in regards to this matter please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Internal Revenue Service

Department of the Treasury
TE/GE Exempt Organizations Examinations
915 Second Avenue M/S W540
Seattle, Washington 98174

October 8, 2009

ORG
ADDRESS

Taxpayer Identification Number:
Form:
Tax Period(s) Ended:
Person to Contact/ID Number:
Contact Numbers:
Telephone:
Fax:

Dear ,

We have enclosed a copy of the preliminary findings of our examination, explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary. Please respond within 30 days of the date of this letter.

If you accept our findings, please sign and return the enclosed Form 6018, *Consent to Proposed Action - Section 7428*, to the individual listed above. We will then send you a final letter revoking your exempt status. Please also file Federal income tax returns (Forms 1120 or 1041) for tax year ending , with the individual listed above.

If you disagree with our findings, please provide in writing any additional information you believe may alter the findings. Your reply should include a statement of the facts, the applicable law, and arguments that support your position. Please also include any corrections to the facts that have been stated, if in dispute.

Upon receipt of your response, we will evaluate any additional information you have provided prior to issuing any final report of examination.

Alternatively, you may have the option of entering into a *Fast Track* settlement agreement. Please refer to the information enclosed regarding the possibility of this option.

Thank you for your cooperation.

Sincerely,

Terry Kino
Revenue Agent

Enclosure:
Form 886-A, Explanation of Items
Publication 4167, Appeals - Introduction to Alternative Dispute Resolution
Form 6018, Consent to Proposed Action - Section 7428

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LEGEND

ORG - Organization name XX - Date City - city State - state President - president Secretary - secretary DIR-1, DIR-2 & DIR-3 - 1ST, 2ND & 3RD DIR
EMP-1, EMP-2, EMP-3, EMP-4, EMP-5 & EMP-6 - 1ST, 2ND, 3RD, 4TH, 5TH, & 6TH EMPLOYEES
CO-1, CO-2, CO-3, CO-4 & CO-5 - 1ST, 2ND, 3RD, 4TH & 5TH COMPANIES

ISSUE

Whether ORG's 501(c)(3) status should be revoked on the grounds that it has not been operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3).

FACTS

ORG. ("ORG") was incorporated in the State of State on May 10, 19XX. The IRS gave ORG an advance ruling period from May 11, 19XX to December 31, 20XX. The IRS issued a final determination letter on March 17, 20XX granting ORG tax-exemption under section 501(c)(3) of the Code. The determination letter advised that ORG was not a Private Foundation because it is an organization described in section 509(a)(2) of the Code.

Articles of Incorporation

In its Articles of Incorporation, ORG states the purposes for which the Corporation is organized and operated as follows:

(a) To engage in the business of credit counseling, including counseling for financial distressed individuals, debt consolidation, and related items and generally to engage in any lawful business or activity for which corporations may be organized under the State Non-profit corporation act and which may, in the judgment of the board of directors, be necessary, useful or advantageous to the Corporation in furthering the purposes of the Corporation.

(b) Charitable, religious, educational, or scientific within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time, including, for such purposes, the making of distributions to organizations that qualify as exempt under such Section 501(c)(3).

(c) To exercise all powers granted by law necessary and proper to carry out the foregoing purposes, including, but not limited, the power to accept donations of money, property, whether real or personal, or any other things of value.

Application for Recognition of Tax Exempt Status

In the Form 1023 application packet that ORG filed June 30, 19XX, they stated that their activities were going to consist of the following:

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1) Debt Elimination Service

Working with individuals to help them plan a budget, paying their bills for them, negotiating payment arrangements with their creditors. Asking creditors to reduce payments and interest so that clients will be able to make arranged payments to all their creditors. Handling problems and discrepancies that arise between the creditor and client. Working with the creditor to come to an agreement to resolve any problems that may occur. Most clients are unable to negotiate solutions on their own with their creditors. Many creditors are unwilling to negotiate with individuals, but they will with this organization.

2) Financial Protection Service

A new service that was developed to handle the financial affairs of the elderly that are physically / mentally challenged. Many of these people are on fixed incomes and cannot regulate fluctuating expenses, which occur largely to being taken advantage of (sic).

These people need caregivers to regulate their day to day living routine but have not been successful in finding organizations that will handle and manage their finances. A monthly budget is set up for each client. All bills come directly to this organization and are carefully scrutinized and prepared for payment. The clients' monthly income is deposited into a trust account. They cannot over spend their budget and no one can get to their money without authorization. The Social Security Administration has recognized this organization to be a very dependable payee for those who require social security benefits. Many of these clients will not receive social security payments unless they have a reliable payee to manage their finances.

Employee Handbook

The mission statement in the employee handbook for ORG states:

"ORG, Inc was developed to help creditors and clients work together for the best possible solution to financial difficulties and credit delinquencies. We are constantly searching for new and better ideas to help our clients resolve their financial difficulties. We are in the process of becoming the BEST processing center in America."

Board of Directors

The board of directors for ORG consists of the following people:

President: President, City, State.

Secretary / Treasurer: Secretary, City, State.

Director: DIR-1, City, State.

Director: DIR-2, City, State.

Director: DIR-3, City, State.

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The only board members with credit counseling experience are President and Secretary. DIR-1 is a contractor supervisor for a firm called CO-2. DIR-2 is the sole proprietor of a company called CO-1. DIR-3 is a retired former business owner.

Website

As of the year 20XX, ORG' website contained the following statements:

ORG's Mission Statement:

ORG. was formed to help creditors and clients work together for the best possible solution to financial difficulties and credit delinquencies. It is very possible in this day and age to live free of unnecessary debt and related stress. We are committed to helping our clients achieve and maintain this desirable and worthy lifestyle.

ORG Debt Elimination Service:

*Consolidates your debts.
Saves you hundreds of dollars in interest.
Lowers your monthly payments.
No refinancing required.
Reduces your debts faster - Be Free.
Stops Creditor's calls and harassment.
Helps both Creditors and Clients work together.
Provides the best solution to financial difficulties.
Avoids bankruptcy.
Preserves integrity of your credit history.
Reduces individual and marriage money stress issues.
ORG offers clients complete relief and peace of mind relative to all their money matters.*

ORG provides the following debt-elimination services:

Credit Cards-As a 501 (c)(3) non-profit organization we are able to negotiate with all credit card companies.

Financial Institutions- We negotiate loans secured with household goods. Settlements have been offered when the client is in a position to do so. We have been able to get delinquent loans re-written in order to re-age the account, resulting in a current status on the credit report.

Medical -We request that all interest be frozen. Settlements may be offered if applicable. **Medical write-off** – If we can prove that a client is unable to pay this bill in full we will ask for a charitable write-off which allows a tax benefit to the creditor, as opposed to bankruptcy, where the creditor will receive nothing.

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IRS- We set up negotiated payment arrangements

- Offer of Compromise
- Abatements

State Taxes - Negotiate payment arrangements

Student Loans - If a client is unable to pay on this loan we will request deferments or extensions.

Collections -We negotiate accounts that are in collections. Request is made for payments to go to the original creditor. Forms are available for cease and desist letters if necessary.

Legal Garnishments – If we cannot get the garnishment removed, we negotiate a reduced amount rather than the 25% allowed by law.

Court Fines – Negotiate payment arrangements

Check and Title Loan companies - We negotiate any balance, no matter how large or small.

- Pay Deferment Plan
- Small Business Debt
- All above procedures apply

Additional Services

Dispute delinquencies on credit reports

Do not report CCCS status to credit reporting agencies

Credit reference for secured loan purchases Example; Automobile, Mortgage,

All payments can be included on the program, such as car, mortgage, and other non negotiated payments, for an additional fee.

Mortgage Referrals

If you are someone that is usually behind on paying bills, hounded by collectors, can not see any way out of debt, and feel that bankruptcy is your only option - Contact ORG - we can help you get out of debt without a loan.

ORG helps clients become debt free, eliminating financial stress.

We are constantly searching for new and better ideas to help our clients resolve their financial difficulties. We are in the process of becoming the BEST processing center in America.

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Frequently Asked Questions

What is the ORG Debt Elimination Program?

This program is designed to help people who are having difficult financial problems. These people usually are behind on bills, are hounded by collectors, can't see any way out of debt, and feel that bankruptcy is their only option. Through this program, creditors offer lower monthly payments and often greatly reduce or eliminate interest and late fees, in an effort to help you meet your financial obligation with them.

How do I know if this program can benefit me?

Every prospective client is offered a free, no-obligation consultation with a certified, licensed counselor. At the consultation, your financial situation is discussed in detail, and benefits to the program are explained. Although every situation is unique, this program can be tailored to fit most people's needs.

How does the program work?

Your counselor contacts all creditors and offers them a new repayment plan with lower interest rates. Since many people are considering bankruptcy at this point, the creditors find this offer more appealing than the alternative. Most creditors are willing to accept the offer, and a repayment plan is initiated with lower interest rates and reduced monthly payments. You pay a pre-determined amount each month to ORG, which is put into a trust account. From this account, ORG pays all your creditors each month, relieving you of this time-consuming task.

Are you really able to negotiate with my creditors, or should I contact them myself?

Our professional staff is trained in the "negotiation language". They know the special terms that are available, and what solutions have been successful for others in similar situations. Your counselor explains to your creditors that you are honorably trying to pay your debts, and that they will receive 100% of what you owe them. Unless you have the necessary negotiation skills and experience, you will never know if the creditor is giving you the best terms available.

Will my creditors and collection agencies stop calling me?

Yes! Once the negotiations are finalized and confirmed by your creditors, these distressing calls will stop.

How will this program affect my credit?

Your creditors may choose to make a comment on your credit report, indicating that you are working with a counseling agency or are involved in a payment plan. ORG is not required to report our clients to any credit bureau and we never do. If you keep making your payments as scheduled with us, you may use ORG as a good credit reference.

Should I consider a consolidation loan?

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You cannot borrow your way out of debt! A consolidation loan will not reduce the amount you owe. It will only place your assets at risk or extend your debt farther into the future and place you deeper in debt. This only extends your difficulties and does not solve them.

Is bankruptcy an option?

Bankruptcy is appropriate in certain situations, but it is not the "easy, quick fix" that it is often advertised to be. Your debt might vanish overnight, but the emotional side effects will last a lifetime. Before you consider bankruptcy, we ask that you visit with our counselors first. With smaller monthly payments and lower interest rates, most people are able to avoid bankruptcy by honorably eliminating their debts. This allows them to feel proud of the choice they made.

The development of ORG., (located in City, State and City, State) was founded in 19XX in City, State. At that time there was limited access for debt-bound individuals to gain relief from their burden except by filing bankruptcy. There was a large, unfulfilled need for financial counseling among the population in State and the United States. The local economy, as well as the nation, was forcing many honest and sincere families into difficult financial situations. With State having the highest unemployment rate in the nation, it was obvious people were going into debt faster and faster. President and Secretary decided to move the company to State where their parents still lived. While in City, ORG gained status with the Social Security Administration to become a Representative Payee to serve the public who received Social Security benefits (monthly income from Social Security). These people are typically elderly, Veterans, mentally-handicapped, physically-handicapped, children, etc. These people all needed assistance in handling their income to pay their bills (rent, cable, phone, garbage, etc).

President and Secretary started the foundation. President is a trained and certified financial consultant for CO-3 and holds a certificate for NIFCE (National Institute for Financial Counseling Education). Her ability in dealing with people, recognizing their individual needs, and negotiating successful agreements has played an important part in the direction ORG has taken. Secretary's dedication and desire to follow all necessary rules and regulations pertaining to the business keeps ORG in perfect financial shape. Secretary is responsible for all licensing, bonding, and financial affairs for ORG.

ORG started in a one room office, sharing counseling by President, and bill paying by Secretary. There was a short time when bills for clients were paid from their kitchen table, but very rapidly the clientele grew faster than they could write! After one year, they moved to an office with a separate counseling office, new computers, hired personal, bought office furniture and continued to assist people from surrounding areas to become debt-free. Every year they moved to a new and larger office, hiring more people, buying more equipment, and helping people throughout the state. New counselors were trained to assist with the volume of new inquiries.

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The Revenue Agent found no educational content on the website, such as the literature or any links to other educational resources.

Federal Returns

ORG filed all required tax returns for the tax year of 20XX. Its Form 990 reported as follows:

20XX Form 990

Gross Receipts

Revenues

Program Service Revenue

Cost of Goods Sold

Total Revenue

Expenses

Compensation of Officers, Directors

Other Salaries and Wages

Payroll Taxes

Accounting Fees

Supplies

Telephone

Postage and Shipping

Occupancy

Equipment Rental and Maintenance

Travel

Conferences, Meetings

Depreciation

Misc.

Taxes, Licenses

Insurance

Advertising

ACH Bank Fees

Contract Labor

Total Expenses

Excess (deficit)

Assets

Cash

Land, Buildings, and Equipment

Other Assets

Total Assets

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Liabilities

Mortgages and Other Notes Payable _____

Total Liabilities _____

ORG' paid officers and employees were as follows:

Officers	Compensation
President	
Secretary	
Employees	
EMP-1	
EMP-2	
EMP-3	
EMP-4	
EMP-5	
EMP-6	
EMP-7	

EMP-1, EMP-2, EMP-4, and EMP-5 are President and Secretary's sons. EMP-3 is their daughter-in-law.

The program service income consists of client contributions of \$, "fair share" contributions from the credit card companies and banks of \$, and initial enrollment fees of \$. There was no income reported on the Form 990 from any of the representative payee plans in which ORG' Form 1023 stated it would become involved.

Part VIII of the Form 990, Relationship of Activities to the Accomplishment of Exempt Purposes, reads as follows:

"Credit counseling (sic) and assisting public with meeting their financial obligations by working out a reduction of expenses and negotiating a repayment schedule and collecting and remitting those payments."

ORG' Activities

Secretary and President, stated on 05/14/20XX that during 20XX ORG discontinued credit counseling as its primary activity. Instead, ORG focused on processing DMPs, and trying to become a representative payee organization for the Social Security Administration ("SSA"), Railroad Retirement Board, and Veterans benefit recipients.

At December 31, 20XX, ORG had 875 DMPs. As of the initial audit appointment May 14, 20XX, ORG was still accepting DMP clients.

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Representative payees for the SSA work with those individuals that are unable to manage their own finances. When an adult is unable to manage or direct the his or her own funds, SSA may need to appoint a representative payee. SSA usually looks for a payee among the beneficiary's family and friends. In some cases, these traditional networks of support are not available, so SSA looks to state, local, or community sources to fill the need. SSA requires that an organization serving as a representative payee that is not a state or local government must be tax-exempt. Representative payees are required to determine the SSA recipients' current needs for day-to-day living (e.g., food, clothing, housing, and medical expenses) and use the recipient's payments to meet those needs.

ORG, for tax years after 20XX was charging a monthly fee for payee services equal to the lesser of 10% of the monthly payment or \$. ORG only charged the fee if, after meeting the SSA recipient's needs, there were any funds left in the account. At the time of the examination in May of 20XX, ORG was acting as the organizational representative for over 100 recipients of SSA, Railroad Retirement Board, and Veterans' benefits.

As of the date of this report, ORG has 89 active DMPs. ORG no longer operates as an SSA representative payee due to new bonding requirements that it can not meet.

Educational Activities

During 20XX, ORG conducted several educational seminars, as follows:

- Seminar 1 – February 9, 20XX. The seminar was given at the CO-4 Center from 2:00pm to 3:30 pm. The subject of the seminar was to make students aware of the importance of credit to their financial future.
- Seminar 2 – June 16, 20XX. The seminar was given at a private home from 6:45pm to 9:00pm. The seminar covered how credit affects one's financial future, how to read a credit report and what to do if there has been inaccurate reporting, how to repair credit if it has been damaged, and protecting against identity theft. There were 12 participants for this seminar.
- Seminar 3 – July 22, 20XX. The seminar was given at CO-5. This was the first in a 6-part series at this location. It covered budgeting on a fixed income. The seminar was an hour-and-a-half in duration.
- Seminar 4 – August 19, 20XX at CO-5. This seminar covered how to prevent and recover from identity theft. The seminar was an hour-and-a-half in duration.
- Seminar 5 – September 16, 20XX at CO-5. This seminar covered how to negotiate with creditors. The seminar was an hour-and-a-half in duration.

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- Seminar 6 – September 30, 20XX at CO-5. The subject of this seminar was building a better credit report and the importance of understanding credit. This seminar was an hour-and-a-half in duration.
- Seminar 7 – October 14, 20XX at CO-5. This seminar covered information on programs available to first time homebuyers. This seminar was one hour in duration.
- Seminar 8 – November 4, 20XX at CO-5. This was the final seminar in the series. The subject matter was money management, budgeting, and credit reporting and scoring. This seminar was an hour-and-a-half in duration.

There were 10-20 participants in each of the CO-5 seminars.

ORG' other educational activity was a monthly newsletter e-mailed to clients with internet access. The newsletters covered the following topics:

- Identity theft,
- Understanding credit,
- After care plan for those individuals finished with their DMPs ,
- 5 factors of credit scoring,
- The importance of watching statements,
- Budgeting income correctly,
- Educating youth about credit responsibility,
- White card fraud,
- ACH Awareness,
- New bankruptcy laws,
- Making extra money, and
- Your Holiday budget.

During the examination visit to the organization on May 14 – 18 of 20XX, the Revenue Agent listened to approximately 25 phone calls taken by ORG' personnel. All of these calls dealt with either maintenance of the DMP accounts or the SSA representative payee program. The Revenue Agent did not observe any educational content in any of the calls.

LAW

Section 501(c)(3) of the Code describes certain organizations exempt from taxation under section 501(a) of the Code as follows:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the

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net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Section 1.501(c)(3)-1(a)(1) of the Treasury Regulations provides that, in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

Section 1.501(c)(3)-1(d)(ii) of the Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)-1(d)(3) of the Regulations defines the term "educational" as including the instruction or training of the individual for the purpose of improving or developing his capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community.

In Revenue Ruling 69-441, 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its Board of Directors was composed of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling, and if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the organization, holding the funds in a trust account and disbursing the funds on a partial payment basis to the creditors. The organization did not charge fees for counseling services or proration services. The debtor received full credit against his debts for all amounts paid. The organization did not make loans to debtors or negotiate loans on their behalf. Finally, the organization relied upon voluntary contributions, primarily from the creditors participating in the organization's budget plans, for its support.

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The Service found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling and a means for the orderly discharge of indebtedness, the organization was relieving the poor and distressed. Moreover, by providing the public with information on budgeting, buying practices, and the sound use of consumer credit, the organization was instructing the public on subjects useful to the individual and beneficial to the community. Thus, the organization was exempt from federal income tax under section 501(c)(3) of the Code.

In the case of Consumer Credit Counseling Service of Alabama, Inc. v. U.S., 44 A.F.T.R.2d 78-5052 (D.D.C. 1978), the District Court for the District of Columbia held that a credit counseling organization qualified as charitable and educational under section 501(c)(3). It fulfilled charitable purposes by educating the public on subjects useful to the individual and beneficial to the community. Income Tax Regulation section 1.501(c)(3)-1(d)(3)(i)(b). For this, it charged no fee. The court found that the counseling programs were also educational and charitable; the debt management and creditor intercession activities were "an integral part" of the agencies' counseling function and thus were charitable and educational. Even if this were not the case, the court viewed the debt management and creditor intercession activities as incidental to the agencies' principal functions, as only approximately 12 percent of the counselors' time was applied to debt management programs and the charge for the service was "nominal." The court also considered the facts that the agency was publicly supported and that it had a board dominated by members of the general public as factors indicating a charitable operation. See also, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S.T.C. 9468 (D.D.C. 1979), in which the facts and legal analysis were virtually identical to those in Consumer Credit Counseling Centers of Alabama, Inc. v. United States.

The organizations included in the above decision waived the monthly fees when the payments would cause a financial hardship. The professional counselors employed by the organizations spent about 88 percent of their time in activities such as information dissemination and counseling assistance rather than those connected with the debt management programs. The primary sources of revenue for these organizations were provided by government and private foundation grants, contributions, and assistance from labor agencies and United Way.

In Easter House v. United States, 846 F. 2d 78 (Fed. Cir. 1988), aff'g 12 Cl.Ct. 476 (1987), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the adoption activity was a non-exempt commercial purpose. It found that the adoption services did not further the exempt purposes of providing educational and charitable services to the unwed mothers and children. Rather, the services for unwed mothers and children were merely provided "incident" to the organization's adoption service business. Moreover, the court found that "adoption services do not in and of themselves constitute an exempt purpose."

The court also agreed with the IRS' determination that the agency operated in a manner not "distinguishable from a commercial adoption agency" because it lacked the traditional attributes of a charity. First, the agency's operation made substantial profits, and there was a substantial

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accumulation of capital surplus in comparison to direct expenditures by the agency for charitable and educational purposes. Second, the agency's operation was funded completely by substantial fixed fees charged to adoptive parents. It relied entirely on those fees and sought no funds from federal, state or local sources, nor engaged in fund raising programs, nor did it solicit contributions. In fact, the agency had no plans, nor intention to seek contributions, government grants or engage in fund raising relative to its operations. Third, the fixed fees the agency charged adoptive parents were not subject to downward adjustment to meet potential adoptive parents' income or ability to pay. Fourth, the agency's single life member had near total control of the operations of the agency. And fifth, the agency functioned by means of a paid staff of 15 to 20 persons, with no volunteer help.

In addition to furthering a substantial non-exempt purpose, the court ruled that the taxpayer failed to show that no part of its earnings inured to the benefit of any private individual or shareholder as defined by sections 1.501(c)(3)-1(c)(2) and 1.501(a)-1(c) of the regulations. The court found the organization provided a source of credit (i.e. loans) to companies in which the private shareholder was either employed or owned. The fact that the loans were made showed that the companies controlled by the private shareholders had a "source of loan credit" in the organization and the ability to use the organization's assets for their personal benefit.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352, 356-57 (1978), the court stated, in part, that the focus of the issues should be "toward which an organization's activities are directed, and not the nature of the activities."

Taxpayer's position

ORG will be allowed to review the preliminary examination report and respond.

Government's position

ORG has not operated exclusively for purposes provided in section 501(c)(3) of the Internal Revenue Code. ORG therefore does not qualify for tax-exempt status under section 501(c)(3) the Code. Secretary and President stated on May 14, 20XX that during 20XX ORG discontinued credit counseling as its primary activity. This was tantamount to an announcement that ORG no longer wished to operate as a 501(c)(3) organization.

ORG' operating as a representative payee for SSA had the potential to bring its activities into accordance with section 501(c)(3) of the Code. The facts gathered for the year 20XX suggest that ORG intended to make this a primary activity. However, the facts do not indicate that this ever came to fruition. Virtually all of the income reported on the 20XX Form 990 is related to DMPs. Whatever success ORG may have had as a representative payee during 20XX and 20XX, it has since had to discontinue this activity, due to a failure to meet bonding requirements. It therefore cannot rely on this activity or purpose as a basis for 501(c)(3) status.

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ORG' year 20XX Form 990 shows a disproportionate amount of DMP activity. Of ORG' \$ of reported revenue, % (\$ ÷ \$) came from "fair share" payments from credit cards and banks. The rest of its revenue came from contributions paid by ORG' clients.

ORG' statement under Part VIII that it assists the public *"by working out a reduction of expenses and negotiating a repayment schedule and collecting and remitting those payments"* further indicates that its focus was on DMPs. DMPs are appropriate in some cases, but when an organization devotes so much of its activities to them, to the exclusion of true educational credit counseling, it demonstrates a primary purpose of making money from fair share payments and acting in the interest of creditors, rather than serving the public.

Of the 25 phone calls that the Revenue Agent observed during May of 20XX, none involved credit counseling. Instead the primary focus was on DMPs. Given the direct relationship between the number of DMPs processed and the amount of fair share payments from creditors, this suggests a conflict of interest on ORG' employees' part.

The relationships of ORG' employees to one-another warrants discussion. Its principals are husband and wife, and five of the remaining seven employees are family members. With % of ORG' total expenses (\$ ÷ \$) going to payroll and payroll taxes, ORG looks more like a family business than a 501(c)(3) organization.

ORG did carry out some educational activities during 20XX by virtue of its seminars at CO-4 and CO-5 Dept. of Human Services. ORG' seminars amounted to about 13 hours of education. These events probably required preparation. Assuming an hour of preparation for every hour of seminar, this would amount to another 13 hours devoted to educational activities. ORG' monthly newsletter could also be regarded as educational. Assuming approximately one hour to compose each newsletter, this would amount to another 12 hours of educational activity, for a total of 38 documentable hours (13 + 13 + 12) devoted to educational activities during 20XX. This is an insignificant amount of educational activity, considering the total hours worked during the year (and/or) the compensation paid to the DIR's and EMP's of roughly \$.

The language found on ORG' website is not indicative of credit counseling or education being a primary purpose. Rather, the language largely promotes and advertises ORG' "debt elimination service". The content on the website would have a debtor believe that ORG can solve all of his or her problems, without educating or instructing the individual on how to avoid problems in the future.

Lack of public involvement was cited as a factor for denying exemption in Easter House v. United States, *supra*, as well as in B.S.W. Group. ORG too has shown a lack of the public involvement that characterizes public charities. Its Form 990 reports no support from grants or donations, which suggests a lack of solicitation of public support. Instead, all of its income comes from the fees it charges clients for setting up DMPs and from the fair share payments from creditors. Its close-knit governing body and personnel stands in stark contrast to the traditional public charity's governing body, composed of diverse individuals representing different parts of a community. Like

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Easter House, ORG functions by means of a paid staff with no volunteer help. An exclusively paid staff is characteristic of a commercial corporation, rather than a charitable non-profit organization.

ORG' case is unlike that of Consumer Credit Counseling Service of Alabama, Inc. v. U.S., 44 A.F.T.R.2d 78-5052 (D.D.C. 1978). CCCS of Alabama's DMPs were found to be "incidental" to its principle functions. In ORG' case, the processing of DMPs is its principle function. The Counselors for CCCS of Alabama spent approximately 12% of their time on DMPs. In ORG' case, employees spend most of their time on DMPs.

ORG is unlike the organization in Revenue Ruling 69-441. The organization in the Revenue Ruling sought to help individuals by educating them in matters of personal money management. The organization also had a diverse governing body. By contrast, ORG' means for helping individuals is primarily enrolling them in DMPs. ORG' governing body is not diverse, with its core consisting of a married couple.

ORG has not demonstrated that the services it provides are educational in the sense recognized by law. A review of ORG' activities discloses no institutional support for education. The presentation and website material appears to be inadequate to provide financial education as there is no educational material on the website and no hyperlinks to any educational information.

Section 1.501(c)(3)-1(c)(1) of the Treasury Regulations provides that an organization will be regarded as operating exclusively for exempt purposes only if it engages primarily in activities that accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code. Servicing DMPs is not a recognized exempt purpose. And, as this is ORG' primary activity, ORG is in violation of Treasury Regulations section 1.501(c)(3)-1(c)(1), and 501(c)(3) status should be revoked.

Conclusion

In order to qualify for exemption under section 501(c)(3) of the Internal Revenue Code, an organization must be both organized and operated to achieve a purpose that is described under that Code section. ORG has failed to demonstrate that it is operated in accordance with Internal Revenue Code section 501(c)(3) and the corresponding Treasury Regulations. ORG' principal activity is the servicing of DMPs. This activity does not achieve charitable or educational purposes, but is rather a commercial service. Accordingly, ORG' tax-exempt status under section 501(c)(3) of the Code should be revoked effective January 1, 20XX. ORG is required to file income tax returns on Form 1120 for all years beginning after December 31, 20XX. If the proposed revocation becomes final, appropriate State officials will be notified of such action in accordance with §6104(c) of the Internal Revenue Code.